September 16, 2010

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation,
ET Docket Nos. 04-186, 02-380;
WT Docket Nos. 08-166, 08-167;
GN Docket No. 09-157

Dear Ms. Dortch,

On September 15, 2010, Harold Feld of Public Knowledge, Michael Calabrese and Ben Lennett of the New America Foundation, Andrew Jay Schwartzman and Jonathan Lane of Media Access Project, and Stephen Coran representing the Wireless Internet Service Providers Association ("WISPA") met with Commissioner Meredith Baker and her legal adviser Charles Mathias, with regard to the above captioned proceeding.

The parties reiterated their support for WISPA's proposal to increase the maximum permissible base station height, observing that it would significantly reduce the cost of rural deployment and could, for some providers in sparsely populated areas, make the difference between no deployment and sustainable deployment.

With regard to the procedural objections raised by MSTV/NAB concerning database inputs, the parties observed as an initial matter that the Commission had specified in the 2008 *Second Report and Order* that it would address matters pertaining to the database via Public Notice (¶227). Even without this initial delegation of authority and notice to interested parties, OET issued a Public Notice and provided adequate opportunity for notice and comment. Resolution of the pending database administration questions by OET on delegated authority would not violate the Administrative Procedures Act (APA).

With regard to whether the Commission should, as a matter of policy, require a full vote of the Commission to grant certifications for sensing-only devices, the parties noted that the Commission must weigh the benefits of such a process against the cost of delay. The issues raised by NAB/MSTV, while important, are highly technical and precisely the sort of issues best dealt with by the FCC's expert engineering staff. In the event NAB/MSTV are dissatisfied with OET's resolution on a particular certification decision, parties would retain the right to seek reconsideration from the full Commission. By contrast, requiring the full Commission to act on sensing-only equipment certifications would introduce yet more costly uncertainty into a lengthy process of testing that has stretched over 8 years since the Spectrum Policy Task Force first proposed this initiative. The dedication and resources expended by the companies eager to develop this technology has been unprecedented – and has limits. A decision to interject still

more delay in the certification process, for no apparent reason, could have a devastating impact on the willingness of companies to develop and deploy this new technology as well as consumers waiting to receive the benefits of this technology. It delays the creation of manufacturing jobs and the deployment of rural broadband, and it threatens to cede the development of this technology to other countries – such as the UK, China, India, and Brazil – which are also investigating the potential for white spaces.

The parties urged the Commission to reject for a second time the proposals of FiberTower, *et al.*, to allocate white space channels for licensed backhaul. The parties agree that there is a significant need for wireless backhaul in rural areas and that FiberTower, *et al*., have made efforts in recent proposals to recognize the needs of those using unlicensed spectrum in the band. Nevertheless, the uncertainty that adoption of the FiberTower proposal would introduce at this stage would almost certainly be fatal to the development of unlicensed use in the TV white spaces. The proposal would create a new class of incumbent stations that unlicensed operators and consumers would be required to protect at a time when the Commission is considering re-packing of the TV broadcast spectrum. Moreover, the mere availability of inexpensive off-the-shelf backhaul equipment is not a sufficient basis for limiting the amount of white space spectrum for unlicensed uses, denying broadband service to millions of consumers without access to fixed broadband and, generally, would create significant uncertainty due to the ability of licensed users to destroy unlicensed operations. Further, the FiberTower proposal is fraught with serious technical problems that would create massive interference. The Commission would need to conduct an additional rulemaking to resolve the many questions raised by the FiberTower proposal. Parties considering investment or deployment in the band would be unwilling to commit until the details of any new rulemaking were settled, or might simply give up on the band altogether.

With regard to wireless microphones, the parties reviewed previous concerns that the combination of reserved channels and possible access to the database by users of grandfathered Part 15 wireless microphones would deprive users of needed channels in the most populous urban markets, placing the success of the technology at risk with no demonstrated need. The Commission's initial engineering analysis in the 2004 *Notice of Proposed Rulemaking* found that TV white space devices would ***not*** interfere with wireless microphones because of the design of these systems and their higher power. Since that time, proponents of additional safeguards for wireless microphone users have utterly failed to present any credible evidence to support their interference concerns or need for additional spectrum. Instead, they have merely offered criticism of studies showing that operation of white spaces devices would not interfere, and have asked the Commission to presume that interference would occur. To sacrifice spectrum capacity needed for next generation technology to appease the unsupported concern of Part 15 wireless microphone users is both unjustified and potentially puts the viability of the technology at risk.

The parties proposed that unlicensed wireless microphones should be confined to the two available channels adjacent to Channel 37 on a *non-exclusive* basis, meaning that wireless microphones would be registered as Part 15 devices in the geolocation database on these channels for the specific event. If additional white space spectrum is needed, then unlicensed wireless microphones should be permitted to register to use Channels 14-20 (where no mobile devices are allowed). However, if the Commission decides to make additional spectrum

available, the parties suggest the following: (1) use of other channels should be upon application to the Commission (OET on delegated authority following public notice) and with a certification made under penalty of perjury, (2) there should be a meaningful application fee to cover the administrative costs, which would also serve to prevent unnecessary blocking of channels that could be used for other purposes, (3) the application must show that Channels 14-20 and the two non-exclusive channels are not available based on a specific showing and reasonably efficient technical solutions, and the inability of existing microphone equipment will not be sufficient to meet this criterion, and (4) the application must be for specific channels on specific dates/times, not an open-ended application which will tie up spectrum capacity even after wireless microphone use ceases in the area.

In accordance with Section 1.1206(b), this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020

Sincerely,

/s/ *Harold Feld*
Harold Feld
Legal Director
Public Knowledge
1818 N St., NW
Suite 410
Washington, DC 20036

Cc:
Commissioner Clyburn
Eloise Gore
Louis Peraertz